

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO.	PDA98-079-01
LOCATION OF PROPERTY	Southwest Corner of Bernal Road and San Ignacio Avenue (101 Bernal Road)
ZONING DISTRICT	A(PD) Planned Development (PDC96-039)
GENERAL PLAN DESIGNATION	Neighborhood/Community Commercial
PROPOSED USE	Planned Development Permit Amendment to allow the addition of two hydrogen fueling dispensers to an existing automobile service station and construction of an approximately 1,120-square foot equipment and storage enclosure for required equipment, on an approximately 1.21 gross acre site.
ENVIRONMENTAL STATUS	Mitigated Negative Declaration for the 101 Bernal Road Hydrogen Fueling Project
APPLICANT/ADDRESS	Aydin Manouchehri Fiedler Group 299 N. Euclid Ave., Ste. 550 Pasadena, CA 91101
OWNER/ADDRESS	Varish Goyal AU Energy, LLC 41805 Albrae Street Fremont, CA 94538

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Project Description.** This is a Planned Development Permit Amendment to allow the addition of two hydrogen fueling dispensers to an existing automobile service station and construction of an approximately 1,120-square foot equipment and storage enclosure for required equipment, on an approximately 1.21 gross acre site.
2. **Site Description and Surrounding Uses.** This 1.21-gross acre site is located at the southwest corner of Bernal Road and San Ignacio Avenue and is a part of a large commercial shopping center. The site is surrounded by the shopping center parking lot to the west, a fast food restaurant with drive through to the south, single-family residential to the east across Bernal Road, and a restaurant to the north across San Ignacio Avenue. The existing site is a gas station with a convenience store and a carwash facility. The existing gas station is permitted to operate 24 hours per day and seven days per week under PD98-079.

3. **General Plan Conformance.** The subject site is designated Neighborhood/Community Commercial on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. The project is an addition of two hydrogen fueling dispensers to the existing gas station in a large shopping center. The proposed project would be consistent with existing uses of the project site. Therefore, the proposed project would be consistent with the land use designation.

The project site is also within Santa Teresa Boulevard/Bernal Road Urban Village. Prior to the adoption of an Urban Village Plan, development should occur consistent with the General Plan land use designation and the Zoning District.

Although Urban Village plans promote walkable communities, the project site is within a more auto-oriented area where there is an existing gas station with car wash service and a fast food restaurant with drive through use. The proposed project is an addition to this existing gas station and the project does not change the pedestrian circulation from the sidewalk along Bernal Road to the convenience store. Therefore, the project would not be inconsistent with the Urban Village plan.

4. **Planned Development Zoning.** The subject site is located in A(PD) Planned Development Zoning District (File No. PDC96-039). In accordance with the Planned Development Zoning, the allowed uses, development standards and performance standards are per the C-1 Commercial Zoning District (this district has been superseded; however, the uses and standards as codified at the time the PD zoning was approved remain applicable to the property).
- a. Use. Gas station is a permitted use under C-1 Commercial Zoning District per 1995 Zoning Code. *The project complies with the use.*
 - b. Height: Per 1995 Zoning Code, the maximum allowable height is 35 feet under C-1 Commercial Zoning District. *The new enclosure is 15.5 feet high and the fuel dispenser is 11.1 feet high. The project complies with the height limit.*
 - c. Setbacks (per 1995 Zoning Code Section 20.80.300)
 - i. Minimum front setback (to northern property line): 25 feet; *The proposed equipment enclosure is more than 40 feet from the northern property line. Project complies.*
 - ii. Minimum side, corner setback (to eastern property line): 12.5 feet; *The project proposes 25-foot setback to the eastern property line. Project complies.*
 - iii. Minimum rear interior setback (to southern property line): 25 feet; *The proposed dispenser is more than 90 feet from the southern property line. Project complies*
 - d. Parking: The existing gas station is permitted under the 21.99-gross acre San Ignacio Center Planned Development Permit, File No. PD98-079. PD98-079 requires 984 parking spaces and provides 1,169 parking spaces. The existing service station requires 4 parking stalls.

Per 1995 Zoning Code Section, 20.12.215, for service stations, the parking requirements are two for each grease rack/vehicle work station plus one for each

employee. It's unclear if the project will result in more employees on-site, however, given that there are more parking spaces than required for the entire shopping center, the project would not result in insufficiency in parking. Project complies.

5. **Environmental Review.** An Initial Study (IS)/Mitigated Negative Declaration (MND) was prepared by the Director of the City of San José's Department of Planning, Building and Code Enforcement for the subject project. The document was circulated for public comment between July 28, 2020 and August 27, 2020. Two comments from Santa Clara Valley Water District (Valley Water) were received on August 27, 2020. The first comment is regarding wells. Valley Water requires any wells found on site to be reported to them. And the second comment is an informational item that Valley Water does not require a District Permit for the project. These comments are noted. The comments received did not result in any substantial changes to the project description, analyses, and/or impacts that was previously disclosed in the IS/MND. The entire IS/MND, Responses to Comments, and other related environmental documents are available on the Planning web site at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/101-bernal-road-hydrogen-fueling-project>

The project would have a potentially significant impact on hazards and hazardous materials because the project site is adjacent to contamination associated with the Fairchild Semiconductor Corporation South San José Plant Superfund Site. However, the significant impact can be mitigated to a less-than-significant level by incorporating certain mitigation measures.

Planned Development Findings.

Section 20.100.940 of the San José Municipal Code establishes the required findings for issuance of a Planned Development Permit.

1. The Planned Development Permit Amendment does not negate any of the required findings of the previously approved Planned Development Permit (File No. PD98-079), as issued, and furthers the policies of the General Plan, in that:

As discussed in the General Plan Conformance section above, the project is consistent with the site's General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial, given that the project does not change the approved use under PD98-079.

2. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development Zoning of the property in that:

As discussed in the Zoning Section above, the project is consistent with the Planned Development Zoning Standards.

3. The Planned Development Permit Amendment, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.

The project is in compliance with Council Policy 6-30, Public Outreach Policy in that the project site was posted with a project information sign on September 6, 2019, and a notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website.

4. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible, and aesthetically harmonious.

The project proposes an addition of two hydrogen fueling dispensers to an existing automobile service station and construction of an approximately 1,120-square foot equipment and storage enclosure for required equipment. The equipment enclosure incorporates split-face design and a trellis on top, and differentiates the colors of the bottom and the mid and top portions. The color theme is consistent with the existing convenience store. In addition, "green walls" with plants are proposed along Bernal Road. New landscaping areas with plants and trees are also proposed around the enclosure's north and south sides to provide screening to the enclosure. The new hydrogen fueling dispensers also applies the similar colors of the existing gas station.

5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

The project occurs in an urbanized area that is adequately served by all required utilities and public services, and the project will not increase the impervious area of the site. The temporary construction of the project would not have an unacceptable negative effect on adjacent property or properties because of City limitations on construction hours and standard permit conditions. The project will implement standard permit conditions in accordance with City standards and regulations for construction and operation.

The project would have a potentially significant impact on hazards and hazardous materials because the project site is adjacent to contamination associated with the Fairchild Semiconductor Corporation South San José Plant Superfund Site. However, the significant impact can be mitigated to a less-than-significant level by incorporating certain mitigation measures which are included as part of the Project Conditions.

The project would not result in significant negative noise, vibration, dust, drainage, erosion, or stormwater runoff and odor impacts to the surrounding properties.

In accordance with the findings set forth above, a Planned Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the Permittee; and

- b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by the Planning Commission, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Conditional Use Permit. The date of issuance is the date this Permit is approved by the Planning Commission. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Conformance to Plans.** Development of the site shall conform to the approved Planned Development Permit Amendment plans entitled "Planned Development Permit Amendment, PDA98-079-01 for Shell Hydrogen, 101 Bernal Road, San Jose, CA95119 " dated revised December 16, 2019 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
5. **Conformance to Other Permits.** Unless specifically modified with this permit, this project shall conform to all terms and conditions of previous permit(s) including: (PD98-079).
6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
7. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
8. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit Amendment incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
9. **Affordable Housing Financing Plans.** The San José City Council ("City") approved the Envision San Jose General Plan 2040 ("General Plan") in 2011. The General Plan provides the framework for development located in San Jose.

The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i)

Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

10. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately.
11. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
12. **Colors and Materials.** All building colors and materials shall be those specified in the Approved Plan Set.
13. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
14. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
15. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
16. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
17. **Fire Department Clearance.** Hazmat clearance and compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
18. **Fire Department Requirements.** The project shall conform to the requirements of the Fire Department at the building plan review stage to the satisfaction of the Chief Building Official and the Fire Chief.
19. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. **Construction Plans.** This permit file number, PDA98-079-01, shall be printed on all construction plans submitted to the Building Division.

- b. **Americans with Disabilities Act.** The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. **Emergency Address Card.** The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. **Construction Plan Conformance.** A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

20. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.

- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- b. **Transportation:** This project is located in the Edenvale Area Development Policy area. Per the policy the project site includes a base maximum floor area ratio (FAR) of 0.35 for Area 2. Any project that exceeds the FAR will be required to pay Edenvale Area Development Policy Transportation Impact Fee (TIF) which is \$2,024/1,000 sf.
- c. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San Jose 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
- d. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10 year storm event.

- iii. The project site is within the State of California Seismic Hazard Zone of Required Investigation for Liquefaction. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to the PW Project Engineer for review and approval by the City Geologist prior to issuance of a grading permit or Public Works Clearance. Foundation, earthwork and drainage recommendations should be included in the report. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation.
 - iv. A design level geotechnical corrective plan must be included in the rough grading plan set to be approved for a grading permit, if ground improvements to mitigate settlement, liquefaction, landslides, or other geologic hazards are recommended in the geotechnical report submitted for the project.
 - e. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
 - f. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - g. **Undergrounding:** This project is located along a designated street, however, there are no existing overhead wires. Therefore, the project is not required to pay Undergrounding In-lieu fee.
 - h. **Street Improvements:**
 - i. Reconstruct the driveways on San Ignacio Avenue and Bernal Road to be City and ADA standards.
 - ii. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
 - iii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
21. **Conformance to Previously Approved (PD98-079) Mitigation Monitoring and Reporting Program.**
22. **Standard Environmental Conditions.**
- a. **Air Quality.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.

- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - vii. Replant vegetation in disturbed areas as quickly as possible.
 - viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
 - x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
 - xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.
- b. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- c. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who

shall then notify the Santa Clara County Coroner. The Coroner will determine as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- i. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - ii. The MLD identified fails to make a recommendation; or
 - iii. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- d. **Seismic Damage:** The project applicant shall implement the following conditions:
- i. To avoid or minimize potential damage from seismic shaking, project construction shall use standard engineering and seismic safety design techniques. Complete building design and construction at the site in conformance with the recommendations of an approved geotechnical investigation. The geotechnical investigation report shall be reviewed and approved by the Department of Public Works as part of the building permit review and entitlement process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
 - ii. Schedule all excavation and grading work in dry weather months or weatherize construction sites.
 - iii. Cover stockpiles and excavated soils with secured tarps or plastic sheeting.
 - iv. Install ditches to divert runoff around excavations and graded areas if necessary.
 - v. Construct the project in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. Obtain a grading permit from the Department of Public Works prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- e. **Paleontological Resources:** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the of the City of San José Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection

and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement.

f. Construction-related water quality:

- i. Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains.
- ii. Suspend earthmoving or other dust-producing activities during periods of high winds.
- iii. Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary.
- iv. Water or cover stockpiles of soil or other materials that can be blown by the wind.
- v. Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks.
- vi. Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers).
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets. Install a tire wash system if requested by the City.
- ix. Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

g. Construction-Related Noise. Noise minimization measures include, but are not limited to, the following:

- i. Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
- ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Prohibit unnecessary idling of internal combustion engines.
- v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- vi. Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- vii. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- x. Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
- xi. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

23. Revocation, Suspension, Modification. This Planned Development Permit Amendment may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **16th day of September, 2020.**

Roselynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy